

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**ALMA GARCIA,**  
***Plaintiff,***

**v.**

**STATE FARM FIRE & CASUALTY  
COMPANY,**  
***Defendant.***

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**Case No. 1:15-cv-208**

**DEFENDANT STATE FARM FIRE & CASUALTY COMPANY'S**  
**NOTICE OF REMOVAL**

Defendant State Farm Fire & Casualty Company files this Notice of Removal.

**PROCEDURAL BACKGROUND**

1. Plaintiff Alma Garcia filed this action on October 15, 2015 against State Farm Fire & Casualty Company ("SFF&CC") in the 445th Judicial District Court of Cameron County, Texas. That case was docketed under cause number 2015-DCL-06414 (the "State Court Action").
2. State Farm Fire & Casualty Company was served with process on October 28, 2015.
3. State Farm Fire & Casualty Company timely files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 445th Judicial District Court of Cameron County, Texas to the United States District Court for the Southern District of Texas, Brownsville Division.
4. Plaintiff's Original Petition filed in the State Court Action included a jury demand.

### **NATURE OF THE SUIT**

5. The State Court Action which has been filed by Plaintiff Alma Garcia involves a dispute over the alleged non-payment of insurance benefits and the handling of Plaintiff's claim for damages allegedly caused by a wind and hailstorm on March 29, 2012 and on April 20, 2012. See *Plaintiff's Original Petition* at ¶ IV. Plaintiff asserts causes of action against SFF&CC including for violations of Texas Deceptive Trade Practices-Consumer Protection Act and Chapters 541 & 542 of the Texas Insurance Code, breach of contract, breach of duty of good faith and fair dealing, negligence and gross negligence. *Id.* at ¶ V.

### **BASIS FOR REMOVAL**

6. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest (Plaintiff and State Farm Fire & Casualty Company) and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. At the time the State Court Action was commenced, Plaintiff Alma Garcia was, and still is, a resident and citizen of Texas residing in Cameron County.

8. Defendant State Farm Fire & Casualty Company was at the time this action was commenced, and still is, a citizen of Illinois.

9. Plaintiff's Original Petition asserts "actual damages incurred by Plaintiff in the storms is \$140,124.63. *Id.* at ¶ IV. Plaintiff also includes a Rule 47(c) statement wherein she pleads that "the relief she seeks is monetary in nature and is over \$200,000 but not more than \$1,000.000 *Id.* at ¶ VII. In addition, Plaintiff seeks treble

damages under the Texas Deceptive Trade Practices-Consumer Protection Act and/or Texas Insurance Code, statutory penalty interest and consequential damages, attorney's fees and additional punitive/exemplary damages.

10. Further, prior to filing suit, Plaintiff sent a demand letter, a copy of which is attached hereto and incorporated by reference, wherein she demanded payment in the amount of \$140,124.63 purportedly reflecting the estimate of Plaintiff's alleged damages under her insurance policy. See Index of Matters Filed, Exhibit 3.

11. Plaintiff's Petition clearly and unambiguously states "actual damages incurred by Plaintiff in the storms is \$140,124.63." It further clearly states "the relief she seeks is monetary in nature and is over \$200,000 but not more than \$1,000.000." Thus, it is "facially apparent" from the Petition that the claim likely exceeds \$75,000, and the amount in controversy requirement for diversity jurisdiction. Moreover, Plaintiff's pre-suit demand further evidences this fact. Accordingly, the amount in controversy requirement for removal is satisfied.<sup>1</sup>

### **REMOVAL IS PROCEDURALLY CORRECT**

12. Removal is procedurally correct.

13. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because State Farm Fire & Casualty Company was served with process on October 28, 2015.

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<sup>1</sup> See, *Arriaga v. Midland Funding LLC*, No. 3:14-CV-4044-M, 2015 U.S. Dist. LEXIS 16661, 2015 WL 567264, at \*3 (N.D. Tex. Feb. 11, 2015)(it was facially apparent that damages exceeded \$75,000, where Plaintiff's alleged damages over \$100,000 but less than \$200,000 ; *TFHSP LLC Series 605 v. Lakeview Loan Servicing, LLC*, No. 3:14-CV-1782-B, 2014 U.S. Dist. LEXIS 156060, 2014 WL 5786949, at \*4 (N.D. Tex. Nov. 3, 2014)("[I]f Plaintiff had designated the option listed under Rule 47(c)(3), . . . the Court would have been able to conclude that the amount in controversy exceeds the \$75,000 requirement, assuming plaintiff stated its request for damages in good faith.").

14. Venue is proper in this Division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

15. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm Fire & Casualty Company in the State Court Action are attached herein to the Index of Matter Filed (Exhibits 2A – 2D).

16. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of Defendant's Original Notice of Removal was promptly given to all parties and to the clerk of the 445th Judicial District Court of Cameron County, Texas.

17. All documents required by Local Rule 81 to be filed with this Notice of Removal are attached herein to the Index of Matter Filed (Exhibits 2A – 2D).

#### **PRAYER**

State Farm Fire and Casualty Company respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm Fire and Casualty Company also requests any additional relief to which it may be entitled.

Respectfully submitted,

/s/ Sofia A. Ramon  
Sofia A. Ramon  
TSBN 00784811/SDOT 20871  
**ATLAS, HALL & RODRIGUEZ, LLP**  
818 Pecan Blvd. (78501)  
P.O. Box 3725  
McAllen, Texas 78502-3725  
(956) 682-5501 – Phone  
(956) 686-6109 – Fax  
**ATTORNEY IN CHARGE FOR DEFENDANT**

Of Counsel:

Dan K. Worthington  
TSBN 00785282 / SDOT 15353  
**ATLAS, HALL & RODRIGUEZ, LLP**  
818 W. Pecan Blvd. (78501)  
P.O. Box 3275  
McAllen, Texas 78502  
(956) 682-5501 – Phone  
(956) 686-6109 – Fax

**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of this document was served on all counsel of record on the 24th day of November, 2015, as indicated below:

David DeGroot  
**THE DEGROOT LAW FIRM, PLLC**  
3827 N. 10th Street, Ste. 304  
McAllen, Texas 78501  
(956) 627-2787 – Phone  
(956) 627-4363 – Fax

**Attorney for Plaintiff**

/s/ Sofia A. Ramon  
Sofia A. Ramon